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The Louisiana Blue Sky Law

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the commodity at exactly the same price." Section 2 of the act, under which this suit was brought, provides that "wilfully and knowingly advertising, offering for sale or selling any commodity *at less than the price stipulated* in any contract . . . is unfair competition and is actionable . . ."²⁰ No mention is made here or elsewhere in the act of sanctions imposed for reselling the commodity at *more* than the price stipulated. The conclusion appears inescapable that the legislature had in mind only minimum prices. It is most unlikely that the lawmakers would authorize a price-fixing agreement without providing protection for that agreement in all areas of its operation.

The soundness of resale price maintenance from an economic viewpoint is by no means established. However, if an abandonment of the practice is desirable, such a movement should emanate from the legislature. The decision in the instant case, because of its drastic effect upon resale price maintenance in interstate transactions, deserves a careful reconsideration. An interpretation of the Louisiana act more consonant with the legislative history of fair trade statutes and more in keeping with the interstate aspects of resale price maintenance is greatly to be desired.

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THE LOUISIANA BLUE SKY LAW

"It is better to close the barn door before the horse is stolen." This homely proverb epitomizes the purpose of regulatory Blue Sky Laws which have been enacted in almost every state. Such statutes purport to prevent promotional frauds by providing for a close scrutiny of new stock or bond issues prior to their being offered to the public. Then too, the Federal Securities Act¹ regulates securities which are offered or delivered through the mails or interstate communications. These statutes afford the buying public much needed protection, and when properly administered do not impose an undue burden on the sale of securities.

20. La. Act 13 of 1936, § 2 [Dart's Stats. (1939) § 9809, 2].

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1. 48 Stat. 74 (1933), 15 U.S.C.A. § 77 (Supp. 1940).

In the 1940 session the legislature of Louisiana passed a very comprehensive act regulating the sale of securities.² This act is designed to prevent fraud in the sale of securities by requiring an investigation before the securities are placed on the market. It prohibits the sale of any security in this state unless it has been registered by notification or qualification.³ The purpose of such registration is to furnish the commissioner with material facts upon which he can determine the soundness of the security before it is offered to the public. The commissioner may refuse to register any security, the sale of which would tend to work a fraud upon the purchaser or where he deems the business of the issuer to be based upon unsound business principles.⁴ The act also requires a dealer or salesman to register before he can sell any security in the state.⁵

EXEMPT SECURITIES

The definition of a security as set out in Section 1 is very broad and will cover almost any type of certificate of indebtedness.⁶ However, certain securities are exempt from the operation of the act.⁷ One important exemption class includes securities listed on the New York, Boston, Chicago, or New Orleans Stock Exchange, the Board of Trade of the City of Chicago, the New York Curb Exchange,⁸ or any other recognized and responsible stock exchange which is approved by the commissioner, and any securities senior to those so listed.⁹ The commissioner has the power to deny exemption to any particular security listed on the specified exchanges.¹⁰ As to those exchanges approved by him, he may at any time withdraw the approval and, upon such with-

2. La. Act 262 of 1940 [Dart's Stats. (Supp. 1941) §§ 1179.1-1179.23].

3. Id. at § 6 [Dart's Stats. (Supp. 1941) § 1179.6].

4. Id. at §§ 7, 8 [Dart's Stats. (Supp. 1941) §§ 1179.7, 1179.8].

5. Id. at § 10 [Dart's Stats. (Supp. 1941) § 1179.11].

6. Id. at § 1(1) [Dart's Stats. (Supp. 1941) § 1179.1(1)]. "'Security' shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, warehouse receipt, certificate of interest or participation, or the right to subscribe to any of the foregoing, certificates of interest in a profit sharing agreement, certificate of deposit for a security, collateral trust certificate, preorganization certificate, preorganization subscription, voting trust certificate, any transferable share, investment contract, or beneficial interest in title to property, profits or earnings, or any other instrument commonly known as a security; including an interim or temporary bond, debenture, note, certificate, or receipt for a security or for subscription to a security."

7. Id. at § 4 [Dart's Stats. (Supp. 1941) § 1179.4].

8. Id. at § 4(f) [Dart's Stats. (Supp. 1941) § 1179.4(f)].

9. Id. at § 4(g) [Dart's Stats. (Supp. 1941) § 1179.4(g)].

10. Id. at § 4(f) [Dart's Stats. (Supp. 1941) § 1179.4(f)].

drawal, no security listed on such exchange shall be entitled to exemption.¹¹

Also exempted from the operation of the act is any security (other than common stock) providing for a fixed return and upon which no default in the payment of principal or interest has occurred for a continuous period of five years immediately preceding the issuance.¹² Negotiable promissory notes, drafts, bills of exchange, bankers' acceptances, and commercial paper are exempt, provided that they mature in not less than twelve months from the date of issue and are issued within three months after the date of sale.¹³

EXEMPT TRANSACTIONS

Section 5 enumerates certain transactions which are exempt from the act. These include the following: the sale of any security at a judicial or other public sale;¹⁴ the sale of a security pledged to secure a debt in order to liquify such debt;¹⁵ an isolated sale not made in the course of repeated and successive transactions of a like character;¹⁶ the distribution of securities by a corporation as a stock dividend or the issuance of securities to stockholders or creditors in the process of a bona fide reorganization or liquidation;¹⁷ the sale, transfer or delivery of securities to any bank, saving institution, trust company, insurance company, broker, or dealer;¹⁸ the transfer or exchange by one corporation to another of securities in connection with a consolidation or a merger, or the exercise of a conversion right;¹⁹ the sale of notes or bonds secured by a mortgage where the securities and the mortgage are sold to a single purchaser at a single sale;²⁰ the issuance and delivery of any security in exchange for any other security of the issuer pursuant to a right of conversion;²¹ subscriptions for shares of capital stock prior to incorporation, where no commission is paid for the sale of such securities;²² sales made by a registered salesman or dealer and the execution of orders

11. Id. at § 4(g) [Dart's Stats. (Supp. 1941) § 1179.4(g)].

12. Id. at § 4(j) [Dart's Stats. (Supp. 1941) § 1179.4(j)].

13. Id. at § 4(i) [Dart's Stats. (Supp. 1941) § 1179.4(i)].

14. Id. at § 5(a) [Dart's Stats. (Supp. 1941) § 1179.5(a)].

15. Id. at § 5(b) [Dart's Stats. (Supp. 1941) § 1179.5(b)].

16. Id. at § 5(c) [Dart's Stats. (Supp. 1941) § 1179.5(c)].

17. Id. at § 5(d) [Dart's Stats. (Supp. 1941) § 1179.5(d)].

18. Id. at § 5(e) [Dart's Stats. (Supp. 1941) § 1179.5(e)].

19. Id. at § 5(f) [Dart's Stats. (Supp. 1941) § 1179.5(f)].

20. Id. at § 5(g) [Dart's Stats. (Supp. 1941) § 1179.5(g)].

21. Id. at § 5(h) [Dart's Stats. (Supp. 1941) § 1179.5(h)].

22. Id. at § 5(i) [Dart's Stats. (Supp. 1941) § 1179.5(i)].

for the purchase of securities, provided that such dealer or salesman acts as agent for the purchaser and has no interest in the transaction other than his commission.²³

REGISTRATION BY NOTIFICATION

Certain securities are entitled to registration by notification.²⁴ This provides a method for the registration of sound securities without great delay and expense. Securities of a corporation, person, company, association, syndicate or trust owning property, business or industry which has been in continuous operation for a period of not less than three years and which has shown certain profits as outlined by the act are entitled to such registration.²⁵ Also, bonds or notes secured by first mortgage upon real property may be registered by notification, provided that the property meets the conditions set out in the act.²⁶ Bonds or notes secured by a first lien on collateral of a certain description which has been pledged as security with a bank or a trust company are entitled to such registration.²⁷

Where the security is entitled to be registered by notification, the issuer or dealer who is interested in the sale must file a statement with the commissioner²⁸ setting forth the name and the location of the issuer, a brief description of the security, together with a statement of facts showing that the security falls within one of the classes defined, and the amount and price of the securities to be offered in this state.²⁹ The filing of this statement and the payment of the required fee constitutes registration and the security may then be sold by any registered dealer subject to further order of the commissioner.³⁰

The act provides that where the security to be offered has been registered with the Securities and Exchange Commissioner of the United States, a copy of this application, together with any information filed in connection therewith, may be filed with the commissioner in lieu of information required by the Louisiana

23. *Id.* at § 5(j) [Dart's Stats. (Supp. 1941) § 1179.5(j)].

24. *Id.* at § 7(A) [Dart's Stats. (Supp. 1941) § 1179.7(A)].

25. *Id.* at § 7(A)(1) [Dart's Stats. (Supp. 1941) § 1179.7(A)(1)].

26. See *id.* at § 7(A)(2), (3), (4), (5), (6) [Dart's Stats. (Supp. 1941) § 1179.7(A)(2), (3), (4), (5), (6)]. These set out in detail the requirements which the bonds or notes must meet in order to come under provisions of Section 7.

27. *Id.* at § 7(A)(7) [Dart's Stats. (Supp. 1941) § 1179.7(A)(7)].

28. *Id.* at § 7(B) [Dart's Stats. (Supp. 1941) § 1179.7(B)].

29. *Id.* at § 7(B)(a), (b), (c), (d), (e) [Dart's Stats. (Supp. 1941) § 1179.7(B)(a), (b), (c), (d), (e)].

30. *Id.* at § 7(B) [Dart's Stats. (Supp. 1941) § 1179.7(B)].

act.³¹ This provision does not decrease the protection, for the Federal Securities Act requires a full disclosure of all material facts, and prevents undue burden on the honest issuer of securities.³²

The commissioner may, at any time, require such further information as he may deem necessary to establish the classification of the security,³³ or to enable him to determine if the registration should be refused or revoked.³⁴ Pending the investigation the commissioner may suspend the right to sell such security by entering an order specifying the grounds for such action and notifying the person filing the statement and every registered dealer who shall have notified the commissioner of an intention to sell such security.³⁵ Upon the entry of the order of suspension the parties interested have a right to demand a prompt hearing. This demand must be made within twenty days.³⁶

REGISTRATION BY CLASSIFICATION

Securities required by the act to be registered before being sold, and not entitled to registration by notification, must be registered by qualification.³⁷ Application may be made by the issuer, if he be a resident of this state, or by any registered dealer desiring to sell the security in the state.³⁸ The commissioner may require the applicant to submit any information which, in his judgment, is necessary to enable him to determine whether or not the security should be registered.³⁹ Where the security has been registered with the Securities and Exchange Commission of the United States and no stop order has been issued, the dealer may file a copy of such registration and all information filed in connection therewith in lieu of the information specifi-

31. *Ibid.*

32. The Federal Securities Act requires a full disclosure of all material facts of any security offered or sold through interstate communications. 48 Stat. 77, 93 (1933), 15 U.S.C.A. §§ 77e, 77aa (Supp. 1940). It is much easier for the issuer to file a copy of this information than to try to set out specific information required by a state act. Also, the commissioner will have all information necessary to investigate soundness of the security.

33. La. Act 262 of 1940, § 7(B) [Dart's Stats. (Supp. 1941) § 1179.7(B)]. Section 12 [Dart's Stats. (Supp. 1941) § 1179.13] provides that party claiming the right to register any security by notification shall have the burden of establishing the right to so register such securities.

34. *Id.* at § 7(B) [Dart's Stats. (Supp. 1941) § 1179.7(B)].

35. *Ibid.*

36. *Ibid.*

37. *Id.* at § 8 [Dart's Stats. (Supp. 1941) § 1179.8].

38. *Ibid.*

39. *Ibid.*

cally required by the Louisiana law.⁴⁰ If, upon examination of the application, the commissioner finds that the sale of the security would not tend to work a fraud upon the purchaser and that the enterprise or business of the issuer is based upon sound business principles, he may record the registration. The security may then be sold by any registered dealer, subject to further orders of the commissioner.⁴¹

The commissioner may revoke the registration of any security if upon further examination it shall appear that the issuer is insolvent, that he has violated any provision of this act or any order of the commissioner of which he had notice, that he has been engaged in or is about to engage in a fraudulent transaction, that he is in any other way dishonest or has made any fraudulent representations in any prospectus or in any other literature that has been distributed concerning the issuer or its securities, that he is of bad business repute, or that he does not conduct his business in accordance with the law or upon sound business principles.⁴² In making the examination the commissioner has access to and may require the issuer to produce all books and papers, and may also examine any officer of the issuer.⁴³ He may also require a balance sheet showing the assets and the liabilities of the issuer, or his income statement.⁴⁴ Pending the investigation the commissioner may issue an order suspending the right to sell the security. The order must state the cause of his action and the commissioner must notify the issuer and every registered dealer. The order cannot be made final until the applicant has been afforded an opportunity to be heard, and after the hearing the commissioner shall notify the registered dealers of the final ruling on the matter.⁴⁵

REGISTRATION OF DEALERS AND SALESMEN

No dealer or salesman may engage in the sale of any security unless he has been duly registered.⁴⁶ The application must be in writing and give information as to the place of business, location of principal and branch offices, names of the persons interested in the business, the length of time that the dealer has been in business, and such other information as the commissioner may

40. *Ibid.* See note 32, *supra*.

41. *Ibid.*

42. *Id.* at § 9 [Dart's Stats. (Supp. 1941) § 1179.9].

43. *Ibid.*

44. *Ibid.*

45. *Ibid.*

46. *Id.* at § 10 [Dart's Stats. (Supp. 1941) § 1179.11].

require.⁴⁷ If the commissioner is satisfied as to the good character of the applicant, he shall register him as a dealer upon the payment of the fee of twenty-five dollars.⁴⁸ A registered dealer may register any salesman by furnishing information as to his good character and paying a fee of five dollars. Such registration shall end upon the termination of the employment of the salesman by the dealer.⁴⁹ All registrations expire on December 31 of each year, subject to the right of renewal by written application and payment of the proper fee. This application must be made not less than thirty days nor more than sixty days before the first day of the ensuing year. The fee for renewal is the same as that required for the original registration.⁵⁰ The names and the addresses of all registered dealers and salesmen are recorded in a register kept in the office of the commissioner, which is open for public inspection.⁵¹ The act also provides that the issuer of any security required to be registered must register as a dealer as provided by this section.⁵²

The commissioner is given the power to refuse or to revoke any registration if, after reasonable notice and hearing, he shall find that the applicant or registrant has violated any provision of the act, has made a material false statement in his application for the registration, has been guilty of a fraudulent act in connection with the sale of securities, has engaged or is about to engage in any practice or sale of securities which is fraudulent or in violation of the law, or has demonstrated his unworthiness to transact the business of a dealer or salesman.⁵³

Where charges have been made against a salesman the commissioner must give notice to the dealer employing such salesman.⁵⁴ Pending the hearing, the registration of any salesman or dealer may be suspended; but the hearing must be had within ten days after the entering of the suspension order or the registration will be automatically restored.⁵⁵ Any order refusing or revoking a registration shall state the cause of such action, and shall be entered with the findings in the Register of Dealers and Salesmen. The act also provides that the suspension or revocation of the registration of a dealer shall also suspend or revoke

47. *Ibid.*

48. *Ibid.*

49. *Ibid.*

50. *Ibid.*

51. *Ibid.*

52. *Ibid.*

53. *Id.* at § 11 [Dart's Stats. (Supp. 1941) § 1179.12].

54. *Ibid.*

55. *Ibid.*

the registration of all his salesmen.⁵⁶ If the commissioner finds that any member of a partnership, or any officer or director of a corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer or salesman, such finding shall be sufficient cause for refusal or cancellation of registration of the partnership, corporation, or association.⁵⁷

THE ESCROW AGREEMENT

An early practice on the part of promoters was to divert to themselves a large number of the corporate shares in exchange for overvalued intangible property. Such practices usually resulted in great injury to the other shareholders who contributed substantially to the capital assets. An interesting provision in the act, designed to prevent such promoter's frauds, is Section 13.⁵⁸ This section provides that when any security is issued for any patent right, copyright, trademark, process, formula, or good will, or for organization expenses, promotion fees, or other intangible assets, the amount and the nature thereof shall be set out and the commissioner may require that the securities be delivered "in escrow" to him. These securities are held by the commissioner until all other stockholders who have paid cash for their securities have been paid earned dividends aggregating not less than six per cent. In case of dissolution or insolvency during the time the securities are held in escrow the owners shall not participate in the assets until after the owners of all other securities have been paid in full.

REMEDIES

Section 14 empowers the commissioner to secure an injunction to prevent any person from violating any provision of this act or from engaging in any practice in connection with the issuance, sale, promotion, advertisement, or distribution of any security in this state which would tend to operate as a fraud upon the purchaser thereof. In order to facilitate his investigation the commissioner may, upon due showing, secure a subpoena requiring the appearance of any defendant and the production of any records, books, documents that may appear necessary.⁵⁹

The Louisiana act also provides a remedy for the individual purchaser.⁶⁰ The sale of an unregistered security, or the sale by

56. *Ibid.*

57. *Ibid.*

58. *Dart's Stats. (Supp. 1941) § 1179.14.*

59. *Id.* at § 14(4)(b) [*Dart's Stats. (Supp. 1941) § 1179.15(4)(b)*].

60. *Id.* at § 15 [*Dart's Stats. (Supp. 1941) § 1179.16*].

an unregistered dealer or salesman, is voidable at the election of the purchaser.⁶¹ The person making the sale and every director, officer, or agent of such seller, who shall have personally participated or aided in any way in the making of the sale shall be liable in solido to such purchaser for the full amount paid with interest, all taxable court costs, and reasonable attorney's fees.⁶² The action must be brought within thirteen months from the date of such sale, or the delivery of such security, whichever is the later date.⁶³

Section 16⁶⁴ provides penal sanctions. Any issuer of securities, or any director, officer, trustee, or agent thereof, or any dealer selling or offering to sell any security without full compliance with the provisions of the act is deemed guilty of a misdemeanor. Upon conviction he shall be fined a sum not exceeding five thousand dollars (the maximum fine is raised to \$25,000 for any subsequent offense), or there may be imprisonment for one year, or both. As a further check upon the dealer or salesman in his dealings with customers, a severe penalty is provided for the making of representations not authorized by the issuer, or any statement at variance with or not reasonably predicated upon the statements and the documents filed by the issuer. Also any person who signs any statement, paper, or document required by the act to be sworn to, knowing any representation therein to be false or misleading, is deemed guilty of perjury and is subject to the penalties provided therefor.

There is no doubt of the fact that there has long existed a need in this state for a new Blue Sky Law. The old act of 1920,⁶⁵ as amended,⁶⁶ was incomplete and did not furnish sufficient protection. Although questions will arise in the future as to the application of the new act and the interpretation of certain of its provisions, it is certain that the legislature has taken a step in the right direction. The new act is very comprehensive, providing a complete system of regulation of both dealers and securities. As a complement to the Federal Security Act it will do much to eliminate unlawful practices in the sale of securities in this state.

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61. Id. at § 15(1) [Dart's Stats. (Supp. 1941) § 1179.16(1)].

62. Ibid.

63. Ibid.

64. Dart's Stats. (Supp. 1941) § 1179.17.

65. La. Act 177 of 1920 [Dart's Stats. (1939) §§ 1165-1179].

66. By La. Act 17 of 1934 (2 E.S.), La. Act 163 of 1936, La. Act 299 of 1936.